* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CO. APPLICATION NO. 1054/2008
IN
COMPANY PETITION NO. 181/2006

Reserved On : 06.09.2010
Date of pronouncement: 21-02-2011

In the matter of : -

Dabur India Limited ……Petitioner
Through Mr. Sudhir K. Makkar, Advocate for the petitioner

And

Vishwa Properties Pvt. Ltd. …….Respondent

Through Mr. Rajiv Bahl, Advocate for the Official Liquidator.

CORAM:
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

SUDERSHAN KUMAR MISRA, J.

1. This application has been filed by the petitioner under Rule 9 of the Companies (Court) Rules, 1959 seeking a direction to the respondent to effect necessary change in its records thereby recording change of name of ownership in respect of Flat No. 201 to 207, Pragati Chambers, Plot No. A-5 & A-6, Community Centre, Ranjeet Nagar, New Delhi, in favour of the petitioner.

2. In the year 2006, a Scheme of Amalgamation was made between Balsara Hygiene Products Limited, Besta Cosmetic Limited, Balsara Home Products Limited (hereinafter collectively referred to as the transferor companies) and Dabur India Limited (hereinafter referred to as the transferee company), the petitioner herein. In respect of the transferor companies, the said Scheme was approved

by the Bombay High Court dated 8th September, 2006, and on 12.9.2006 in respect of the transferee company by this Court.

3. In terms of the aforesaid Scheme of Amalgamation, all the properties and assets (moveable or immoveable) of the transferor companies were proposed to be transferred to the transferee company. Consequently, once the Scheme was approved, the flats in question, which were owned by the transferor companies, stood automatically transferred to the transferee company, all that remains is that the name of the transferee company after amalgamation has to be substituted for the transferor company's name in the respondents record.

4. This matter has been on board for more than a year. On 29th April, 2009, fresh notice was directed to be issued, returnable on 17th September, 2009. On 17th September, 2009, an opportunity was granted to counsel for the respondent to file a reply within four weeks and the matter was adjourned to 5th March, 2010. On 5th March, 2010, the matter was re-notified on 27th July, 2010. On 27th July, 2010, since there was no appearance on behalf of the respondent and nor had any reply been filed, the matter was adjourned to 28th July, 2010 in the interest of justice. On 28th July, 2010, the matter was heard substantially, and at the request of counsel for the respondent to enable him to seek instructions from his client with a view to exploring the possibility of a settlement, it was adjourned for 6th September, 2010. None appeared on 6.9.2010 when the matter was heard and judgment reserved.

5. The case of the petitioner is that when it approached the respondent for taking the necessary steps for inserting its name in

place of the erstwhile, pre-amalgamated company in its records, the respondent raised a demand for transfer charges at the rate of Rs. 300/- per sq. ft.

6. Aggrieved by the said demand, the petitioner has approached this court seeking a direction to the respondent to effect the necessary change in its records to correctly reflect the name of the current owner of those flats, who happens to be the applicant, without insisting on any transfer charges.

7. During the course of hearing, counsel for the petitioner relied on Section 392 of the Companies Act, 1956 to demonstrate the power of this Court to issue appropriate orders, "in regard to any matter" as provided in Section 392(1)(b), as are considered necessary for the proper working of a Scheme, as well as to "supervise" the carrying out of the arrangement/amalgamation. He also relied on the judgment of the Supreme Court in the matter of **Hindustan Lever & Ors. Vs. State of Maharashtra & Ors.,** AIR 2004 SC 326. Paragraph 15 of the said case states, inter alia, as under: -

> "15. ……..The recital in the scheme of amalgamation as well as the order of the High Court under Section 394 of the Companies Act, declares, that upon such order of High Court the undertaking of the transferor company shall stand transferred to the transferee company with all its movable, immovable and tangible assets to the transferee company without any further act or deed……."

8. The case of the builder, who is the respondent, rests on Clause 24 of the Purchase Agreement executed between the

erstwhile, pre-amalgamated, companies and the respondent. It states as follows:-

> "24. Transfer – The buyer may assign his rights, under this Agreement in the shop/flat/godown but only after obtaining prior approval in writing of the promoter and other authorities, if required under the law, subject to Clause 22 ibid and also on payment administrative charges as fixed by the promoter."

9. The contention of the petitioner is that even if it is assumed for the sake of argument that the said clause is properly invoked by the respondent under the circumstances, it is liable to pay only, "administrative charges", and not the transfer charges at the rate of Rs. 300/- per sq. ft., as demanded by the respondent. He submits that, even in terms of Clause 24 of the aforesaid Purchase Agreement, it was not the intention of the parties that further profits should accrue to the promoters when a transfer is made. The charges that are levied, have been specified to be, "administrative" in nature. Consequently, it is obvious that the charge of Rs. 300/- per square feet, in any case, is unjustifiable.

10. The decision of the Supreme Court in **Hindustan Lever & Ors.** (supra) leaves no doubt that upon sanction of the scheme of amalgamation, all assets of the transferor company, that is of the erstwhile companies, Balsara Hygienic Products Ltd.; Besta Cosmetics Pvt. Ltd; and Balsara Home Products Pvt. Ltd., stood automatically transferred to the amalgamated company, and at that moment, they all vested in the amalgamated company. This position of law is absolute and does not admit to any exception or conditionality.

11. If any rights have accrued as a consequence of the amalgamation, to the amalgamated company, in any property, then, having succeeded to these rights, the amalgamated company can always sue for its dues or for enforcement of those rights. In this case, what the amalgamated company seeks is a recording of the facts of its ownership of a property, which was earlier shown in the name of a pre-amalgamated company. It is not as if the owner, whose name is on the buyers agreement, is seeking the respondent's approval in terms of Clause 24 of the Purchase Agreement for assigning its rights in the property to the petitioner. It is merely the right of the post amalgamated company which ultimately emerged, to be shown as the owner of the premises, which is being asserted here.

12. Although the respondent has not bothered to appear and has not even filed a reply; however, looking at the communication of 14th June, 2008, which has been annexed, it is treating this request of the amalgamated company, that the name be changed, from that of the pre-amalgamated company to the applicant company post amalgamation, as a request for approval for a transfer. It claims this charge on the basis of the power under the aforesaid clause 24 of the Purchase Agreement which permit it to levy an, "administrative charge", for granting its approval permitting the recorded owner to assign his rights to someone else. In this case, it has demanded this charge @ ` 300 per sq. ft.

13. Regardless of whether the order of amalgamation does or does not operate as a transfer or sale of the property in question

from the transferor companies at the pre-amalgamation stage, to the transferee company upon the passing of the order of amalgamation by the Court; the fact remains that even Clause 24 of the Agreement, which is being invoked by the respondent, specifically restricts the right of the respondent to charge only administrative charges upon the assignment of its rights by the owner to somebody else. Transfer charges of the nature entitling the respondent to further income, upon the acquisition of ownership rights in the property by a new person, are clearly not contemplated; and de hors the original flat buyers agreement between the respondent and pre-amalgamated company which had originally purchased the flats, such a right cannot be said to vest in to the original seller i.e. the respondent herein. To my mind, under the contract, at the highest, the only right that can be legally asserted is a right to claim administrative charges and nothing more. Clause 24 has to be construed reasonably. Respondent cannot demand an amount entirely disproportionate and alien to its obvious intent.

14. It follows therefore that even if this clause were applicable to the current circumstances, the entitlement of the respondent could only be to "administrative charges". Administrative charges are always restricted to charges which are commensurate with the necessary paper work and correspondence that may have to be carried out by the respondent in its own recors to reflect the changed name of the owner. It is unthinkable for the respondent to realize administrative charges @ Rs. 300/- per sq. ft. Such a charge cannot, by any stretch of the imagination fall within

the purview of, "administrative", charges. In this view of the matter also, the impugned demand of transfer charges @ ` 300 per sq. ft. is unsustainable and deserves to be quashed. At the same time, counsel for the applicant has expressed his client's willingness to pay any reasonable charge without going into the question whether the amalgamation in question amounts to a transfer or not.

15. Consequently, and for all these reasons, the impugned demand dated 14th June, 2008, raised by the respondent calling upon the petitioner/applicant to pay the administrative charges in terms of the aforesaid Clause 24 of the agreement is quashed. The respondent is directed to update the said records by reflecting the name of the applicant as the owner of Flat Nos. 201 to 207 of the property in question. It would, however, be open to the respondent to levy a reasonable administrative charge in terms of the said clause not exceeding ` 1000 for this purpose. All necessary steps are to be taken by the respondent in this behalf within three weeks of the communication of this order to it by the petitioners.

16. The application stands disposed of.

SUDERSHAN KUMAR MISRA, J.

FEBRUARY 21, 2011
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